

**ASSEMBLY BILL**

**No. 1605**

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**Introduced by Assembly Members Wolk and Berg**  
**(Principal coauthor: Assembly Member Evans)**  
(Principal coauthors: Senators Alquist and Simitian)  
**(Coauthor: Assembly Member Pavley)**  
(Coauthor: Senator Scott)

February 22, 2005

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An act to amend Sections 15634 and 15655.5 of, and to add Section 15630.1 to, the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1605, as introduced, Wolk. Elder and dependent adult abuse.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse. These procedures require persons, defined as mandated reporters, to report known or suspected instances of elder or dependent adult abuse. Under existing law, care custodians of elder or dependent adults and local law enforcement agencies are mandated reporters. A violation of the reporting requirements by a mandated reporter is a misdemeanor.

This bill would include within these reporting requirements mandated reporters of suspected financial abuse, as defined, and would, with certain exceptions, make the related misdemeanor provisions applicable to mandated reporters of suspected financial elder abuse, as defined, thereby imposing a state-mandated local program by changing the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 15630.1 is added to the Welfare and  
2 Institutions Code, to read:  
3 15630.1. (a) As used in this section “mandated reporter of  
4 suspected financial elder abuse” includes all officers and  
5 employees of financial institutions.  
6 (b) As used in this section the term “financial institution”  
7 means any of the following:  
8 (1) A depository institution, as defined in Section 3(c) of the  
9 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).  
10 (2) An institution-affiliated party, as defined in Section 3(u) of  
11 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).  
12 (3) A federal credit union or state credit union, as defined in  
13 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec.  
14 1752), including, but not limited to, an institution-affiliated party  
15 of a credit union, as defined in Section 206(r) of the Federal  
16 Credit Union Act (12 U.S.C. Sec. 1786(r)).  
17 (c) Any mandated reporter of suspected financial elder abuse  
18 who has direct contact with the elder or who reviews or approves  
19 the elder’s financial documents, records, or transactions, in  
20 connection with providing financial services with respect to an  
21 elder or dependent adult, and who, within the scope of his or her  
22 employment and professional practice, has observed or has  
23 knowledge of an incident, that is directly related to the  
24 transaction or matter that is within that scope of practice, that  
25 reasonably appears to be financial abuse, or reasonably suspects  
26 that abuse, shall report the known or suspected instance of  
27 financial abuse by telephone immediately, or as soon as  
28 practicably possible, and by written report sent within two  
29 working days to the local adult protective services agency or the  
30 local law enforcement agency.

1 (d) An allegation by the elder, or any other person, that  
2 financial abuse has occurred is not sufficient to trigger the  
3 reporting requirement under this section if both of the following  
4 conditions are met:

5 (1) The mandated reporter of suspected financial elder abuse is  
6 aware of no other corroborating or independent evidence of the  
7 alleged elder abuse. The mandated reporter of suspected financial  
8 elder abuse is not required to investigate any accusations.

9 (2) In the exercise of his or her professional judgment, the  
10 mandated reporter of suspected financial elder abuse reasonably  
11 believes that financial elder abuse did not occur.

12 (e) Failure to report financial abuse under this section shall be  
13 subject to subdivision (h) of Section 15630.

14 (f) A person employed as a teller in an institution described in  
15 paragraphs (1) and (2) of subdivision (a) shall not be subject to  
16 subdivision (h) of Section 15630 during the first six months of  
17 his or her employment, if the person has not received training or  
18 instructional materials regarding the duties imposed by this  
19 article including, but not limited to, identification and reporting  
20 of financial elder abuse.

21 SEC. 2. Section 15634 of the Welfare and Institutions Code is  
22 amended to read:

23 15634. (a) No care custodian, clergy member, health  
24 practitioner, *mandated reporter of suspected financial elder*  
25 *abuse*, or employee of an adult protective ~~service~~ *services* agency  
26 or a local law enforcement agency who reports a known or  
27 suspected instance of elder or dependent adult abuse shall be  
28 civilly or criminally liable for any report required or authorized  
29 by this article. Any other person reporting a known or suspected  
30 instance of elder or dependent adult abuse shall not incur civil or  
31 criminal liability as a result of any report authorized by this  
32 article, unless it can be proven that a false report was made and  
33 the person knew that the report was false. No person required to  
34 make a report pursuant to this article, or any person taking  
35 photographs at his or her discretion, shall incur any civil or  
36 criminal liability for taking photographs of a suspected victim of  
37 elder or dependent adult abuse or causing photographs to be  
38 taken of such a suspected victim or for disseminating the  
39 photographs with the reports required by this article. However,

1 this section shall not be construed to grant immunity from this  
2 liability with respect to any other use of the photographs.

3 (b) No care custodian, clergy member, health practitioner,  
4 *mandated reporter of suspected financial elder abuse*, or  
5 employee of an adult protective services agency or a local law  
6 enforcement agency who, pursuant to a request from an adult  
7 protective services agency or a local law enforcement agency  
8 investigating a report of known or suspected elder or dependent  
9 adult abuse, provides the requesting agency with access to the  
10 victim of a known or suspected instance of elder or dependent  
11 adult abuse, shall incur civil or criminal liability as a result of  
12 providing that access.

13 (c) The Legislature finds that, even though it has provided  
14 immunity from liability to persons required to report elder or  
15 dependent adult abuse, immunity does not eliminate the  
16 possibility that actions may be brought against those persons  
17 based upon required reports of abuse. In order to further limit the  
18 financial hardship that those persons may incur as a result of  
19 fulfilling their legal responsibilities, it is necessary that they not  
20 be unfairly burdened by legal fees incurred in defending those  
21 actions. Therefore, a care custodian, clergy member, health  
22 practitioner, *mandated reporter of suspected financial elder*  
23 *abuse*, or an employee of an adult protective services agency or a  
24 local law enforcement agency may present to the State Board of  
25 Control a claim for reasonable attorneys' fees incurred in any  
26 action against that person on the basis of making a report  
27 required or authorized by this article if the court has dismissed  
28 the action upon a demurrer or motion for summary judgment  
29 made by that person, or if he or she prevails in the action. The  
30 State Board of Control shall allow that claim if the requirements  
31 of this subdivision are met, and the claim shall be paid from an  
32 appropriation to be made for that purpose. Attorneys' fees  
33 awarded pursuant to this section shall not exceed an hourly rate  
34 greater than the rate charged by the Attorney General at the time  
35 the award is made and shall not exceed an aggregate amount of  
36 fifty thousand dollars (\$50,000). This subdivision shall not apply  
37 if a public entity has provided for the defense of the action  
38 pursuant to Section 995 of the Government Code.

39 SEC. 3. Section 15655.5 of the Welfare and Institutions Code  
40 is amended to read:

1 15655.5. A county adult protective~~—service~~ *services* agency  
2 shall provide the organizations listed in paragraphs (v), (w), and  
3 (x) of Section 15610.17, *and mandated reporters of suspected*  
4 *financial elder abuse pursuant to Section 15630.1*, with  
5 instructional materials regarding elder and dependent adult abuse  
6 and neglect and their obligation to report under this chapter. At a  
7 minimum, the instructional materials shall include the following:

8 (a) An explanation of elder and dependent adult abuse and  
9 neglect, as defined in this chapter.

10 (b) Information on how to recognize potential elder and  
11 dependent adult abuse and neglect.

12 (c) Information on how the county adult protective~~—service~~  
13 *services* agency investigates reports of known or suspected abuse  
14 and neglect.

15 (d) Instructions on how to report known or suspected incidents  
16 of abuse and neglect, including the appropriate telephone  
17 numbers to call and what types of information would assist the  
18 county adult protective~~—service~~ *services* agency with its  
19 investigation of the report.

20 SEC. 4. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the  
25 penalty for a crime or infraction, within the meaning of Section  
26 17556 of the Government Code, or changes the definition of a  
27 crime within the meaning of Section 6 of Article XIII B of the  
28 California Constitution.